



RFP No: 3677

INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until **April 27, 2012 @ 3:00 p.m.** Central Time for the acquisition of the products/services described below for Mississippi Department of Human Services.

Acquisition of a web-based early learning management system hosted through the services of an experienced Applications Service Provider (ASP)

MANDATORY VENDOR CONFERENCE CALL: Tuesday, April 10, 2012,
10:00 a.m. CST

The Vendor must submit proposals and direct inquiries to:

Donna Hamilton
Technology Consultant
Information Technology Services
3771 Eastwood Drive
Jackson, MS 39211
(601) 432-8114
Donna.Hamilton@its.ms.gov@its.ms.gov

To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

PROPOSAL, SUBMITTED IN RESPONSE TO
RFP NO. 3677
due April 27, 2012 @ 3:00 p.m.,
ATTENTION: Donna Hamilton

Craig P. Orgeron, Ph.D.
Executive Director, ITS

ITS RFP Response Checklist

RFP Response Checklist: These items should be included in your response to RFP No. 3677.

- _____ 1) One clearly marked original response and 6 identical copy/copies of the complete proposal. Label the front and spine of the three-ring loose-leaf binder with the Vendor name and RFP number. Include the items listed below inside the binder. Please DO NOT include a copy of the RFP in the binder.
- _____ 2) *Submission Cover Sheet*, signed and dated. (Section I)
- _____ 3) *Proposal Exception Summary*, if applicable (Section V)
- _____ 4) Vendor response to *RFP Questionnaire* (Section VI)
- _____ 5) Point-by-point response to *Technical Specifications* (Section VII)
- _____ 6) Vendor response to *Cost Information Submission* (Section VIII)
- _____ 7) *References* (Section IX)

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SECTION I

SUBMISSION COVER SHEET & CONFIGURATION SUMMARY

Provide the following information regarding the person responsible for the completion of your proposal. This person should also be the person the Mississippi Department of Information Technology Services, **(ITS)**, should contact for questions and/or clarifications.

| | | | |
|---------|-------|---------|-------|
| Name | _____ | Phone # | _____ |
| Address | _____ | Fax # | _____ |
| | _____ | E-mail | _____ |

Subject to acceptance by **ITS**, the Vendor acknowledges that by submitting a proposal AND signing in the space indicated below, the Vendor is contractually obligated to comply with all items in this Request for Proposal (RFP), including the Standard Contract in Exhibit A if included herein, except those listed as exceptions on the Proposal Exception Summary Form. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors who sign below may not later take exception to any point during contract negotiations. The Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

Original signature of Officer in Bind of Company/Date

Name (typed or printed)

Title

Company name

Physical address

State of Incorporation

CONFIGURATION SUMMARY

The Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less.

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PROPOSAL BONDS

A Proposal Bond is not required for this procurement.

SECTION II

PROPOSAL SUBMISSION REQUIREMENTS

The objective of the Proposal Submission Requirements section is to provide Vendors with the information required to submit a response to this Request for Proposal (RFP). A Vendor who has responded to previous RFPs issued by **ITS** should not assume that the requirements are the same, as changes may have been made.

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of the Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor's proposal must be received, in writing, by the office of **ITS** by the date and time specified. **ITS** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Vendor's original submission must be clearly identified as the original. The Vendor's original proposal must include the Proposal Bond, (if explicitly required in Section IV).
6. **ITS** reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. **ITS** reserves the right to waive any defect or irregularity in any proposal procedure.
8. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by **ITS** is the official version and will supersede any conflicting RFP language submitted by the Vendor.

The Vendor must conform to the following standards in the preparation of the Vendor's proposal:

- 8.1 The Vendor is required to submit one clearly marked original response and 6 identical copy/copies of the complete proposal, including all sections and exhibits, in three-ring binders.

- 8.2 To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information on the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.
- 8.3 Number each page of the proposal.
- 8.4 Respond to the sections and exhibits in the same order as this RFP.
- 8.5 Label and tab the responses to each section and exhibit, using the corresponding headings from the RFP.
- 8.6 If the Vendor does not agree with any item in any section, then the Vendor must list the item on the *Proposal Exception Summary Form*. (See Section V for additional instructions regarding Vendor exceptions.)
- 8.7 Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with "NOT APPLICABLE."
- 8.8 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 8.9 When an outline point/attachment is a statement provided for the Vendor's information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
- 8.10 Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
- 8.11 The Vendor must fully respond to each requirement within the *Technical Specifications* by fully describing the manner and degree by which the proposal meets or exceeds said requirements.
9. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor's cost proposal may be grounds for rejection of the Vendor's proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The Vendor should supply supporting details as described in the *Cost Information Submission*.

10. **ITS** reserves the right to request additional information or clarification of a Vendor's proposal. The Vendor's cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor's overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at the State's discretion, result in the disqualification of the Vendor's proposal.
11. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **ITS**.
12. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
 - 12.1 A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
 - 12.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
 - 12.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
 - 12.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
 - 12.5 The Vendor must submit a statement outlining the circumstances for the clarification.
 - 12.6 The Vendor must submit one clearly marked original and 6 copies of the clarification.
 - 12.7 The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
13. **Communications with State**

From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this RFP with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure equal treatment for each responding Vendor, all questions regarding this RFP must be submitted in writing to the State's contact person for the selection process, and not later than the last date for accepting responding Vendor questions provided in this RFP. All such questions will be answered officially by the State in writing. All such questions and

answers will become addenda to this RFP, and they will be posted to the ITS web site. Vendors failing to comply with this requirement will be subject to disqualification.

- 13.1 The State's contact person for the selection process is: Donna Hamilton, Technology Consultant, 3771 Eastwood Drive, Jackson, MS 39211, 601-432-8114, Donna.Hamilton@its.ms.gov.
- 13.2 Vendor may consult with State representatives as designated by the State's contact person identified in 13.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

SECTION III VENDOR INFORMATION

The objective of the Vendor Information section of this RFP is to provide Vendors with information required to respond to the RFP successfully.

1. Interchangeable Designations

The terms “Vendor” and “Contractor” are referenced throughout this RFP. Generally, references to the “Vendor” are used in conjunction with the proposing organization and procurement process leading up to the final RFP selection and award. The term “Contractor” denotes the role assumed, post-award, by the winning Vendor. Additionally, the terms “State of Mississippi,” “State” or “ITS” may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Vendors throughout these specifications. References to a specific agency, institution or other political entity represent the client or customer on whose behalf ITS is issuing the RFP.

2. Vendor’s Responsibility to Examine RFP

Vendors must examine all documents, forms, specifications, standard provisions, and instructions.

3. Proposal as Property of State

All written proposal material becomes the property of the State of Mississippi.

4. Written Amendment to RFP

Any interpretation of an ITS RFP will be made by written amendment only. The State will not be responsible for any other explanation of this RFP. A copy of any amendment will be posted on the ITS website, together with the associated RFP specification. Vendors are required to check the ITS website periodically for RFP amendments before the proposal opening date at: http://www.its.ms.gov/rfps/rfps_awaiting.shtml.

Any and all amendments will be posted no later than noon, seven days prior to the proposal opening date listed on the cover page of this RFP. Should you be unable to access the ITS website, you may contact the ITS technology consultant listed on page one of this RFP and request a copy.

5. Oral Communications Not Binding

Only transactions which are in writing from ITS may be considered official. No negotiations, decisions, or actions shall be executed by any Vendor as a result of any discussions with any State employee.

6. Vendor’s Responsibility for Delivery

Vendors must ensure, through reasonable and sufficient follow-up, proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this RFP. The State will not be responsible for the failure of any delivery medium for

submission of information to or from the Vendor, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.

7. **Evaluation Criteria**

The State's intent in issuing this RFP is to award a contract to the lowest and best responsive Vendor who meets specifications, considering price and other factors. The Vendor's past performance, cooperation, and ability to provide service and training are general factors that will be weighed in the selection process. More specific information concerning evaluation criteria is presented in *Technical Specifications*.

8. **Multiple Awards**

ITS reserves the right to make multiple awards.

9. **Right to Award in Whole or Part**

ITS reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.

10. **Right to Use Proposals in Future Projects**

The State reserves the right to evaluate the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects if (a) it is deemed to be in the best interest of the State to do so; and (b) the Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Vendor's proposal for future projects is solely at the discretion of the State and requires the agreement of the proposing Vendor. The State's decision to reuse an awarded proposal will be based upon such criteria as: (1) the customer's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Vendor, market, and technical environments since the initial award.

11. **Price Changes During Award or Renewal Period**

A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.

12. **Right to Request Information**

The State reserves the right to request information relative to a Vendor's references and financial status and to visit a Vendor's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm, and reserves the right to require that Vendors document their financial ability to provide the products and services proposed up to the total dollar amount of the Vendor's cost proposal. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor's list of references.

13. Vendor Personnel

For RFPs including professional services specifications, the Vendor will be required to provide and/or certify the following for each individual included in the Vendor's proposal:

- 13.1 A direct telephone number at which the individual may be contacted for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.
- 13.2 That, if onsite interviews are required, the individual can be at the specified location in Mississippi within the timeframe specified. All costs associated with onsite interviews will be the responsibility of the Vendor.
- 13.3 That the individual is proficient in spoken and written English;
- 13.4 That the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all INS regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens.
- 13.5 That the personnel assigned to a project will remain a part of the project throughout the duration of the contract as long as the personnel are employed by the Vendor, unless replaced by the Vendor at the request of the State. This requirement includes the responsibility for ensuring all non-citizens maintain current INS eligibility throughout the duration of the contract.

14. Vendor Imposed Constraints

The Vendor must specifically document what limitations, if any, exist in working with any other Contractor acting in the capacity of the State's business partner, subcontractor or agent who may be managing any present or future projects; performing quality assurance; integrating the Vendor's software; and/or providing web-hosting, hardware, networking or other processing services on the State's behalf. The project relationship may be based on roles as either equal peers; supervisory – subordinate; or subordinate – supervisory, as determined by the State. The State recognizes that the Vendor may have trade secrets, intellectual property and/or business relationships that may be subject to its corporate policies or agreements. The State must understand these issues in order to decide to what degree they may impact the State's ability to conduct business for this project. These considerations will be incorporated accordingly into the proposal evaluation and selection process. The understanding reached between the Vendor and the State with regard to this business relationship precludes the Vendor from imposing any subsequent limitations of this type in future project undertakings by the State.

15. Best and Final Offer

The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State believes none of the competing proposals presents a Best Value (lowest and best proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

16. Restriction on Advertising

The Vendor must receive written approval from the State before advertising or referencing the award of the contract or the services being provided. The Vendor must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi.

17. Rights Reserved to Use Existing Product Contracts

The State reserves the right on turnkey projects to secure certain products from other existing ITS contracts if it is in its best interest to do so. If this option is exercised, then the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

18. Additional Information to be Included

In addition to answering each specification within this RFP, the Vendor must include complete product/service information, including product pictorials and technical/descriptive literature relative to any product/service offered with the proposal. Information submitted must be sufficiently detailed to substantiate that the products/services offered meet or exceed specifications.

19. Valid Contract Required to Begin Work

The successful Vendor should not commence any billable work until a valid contract has been executed. Any work done by the successful Vendor prior to the execution of the contract is done at the Vendor's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.

SECTION IV LEGAL AND CONTRACTUAL INFORMATION

The objective of the *Legal and Contractual Information* section is to provide Vendors with information required to complete a contract or agreement with **ITS** successfully.

1. **Acknowledgment Precludes Later Exception**

By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Standard Contract* in Exhibit A if included herein, except those specifically listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

2. **Failure to Respond as Prescribed**

Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections and exhibits of this RFP, including the *Standard Contract* attached as Exhibit A, if applicable, shall contractually obligate the Vendor to comply with that item.

3. **Contract Documents**

ITS will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all contracts between **ITS** and the Vendor:

- 3.1 The Proposal Exception Summary Form as accepted by **ITS**;
- 3.2 Contracts which have been signed by the Vendor and **ITS**;
- 3.3 **ITS'** Request for Proposal, including all addenda;
- 3.4 Official written correspondence from **ITS** to the Vendor;
- 3.5 Official written correspondence from the Vendor to **ITS** when clarifying the Vendor's proposal; and
- 3.6 The Vendor's proposal response to the **ITS** RFP.

4. **Order of Precedence**

When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both **ITS** and the winning Vendor.

5. Additional Contract Provisions

The contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

6. Contracting Agent by Law

The Executive Director of **ITS** is, by law, the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of computer and telecommunications equipment, systems, software, and services (Section 25-53-1, et seq., of the Mississippi Code Annotated). **ITS** is issuing this RFP on behalf of the procuring agency or institution. **ITS** and the procuring agency or institution are sometimes collectively referred to within this RFP as "State."

7. Mandatory Legal Provisions

- 7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 7.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 7.3 The Vendor shall have no limitation on liability for claims related to the following items:
 - 7.3.1 Infringement issues;
 - 7.3.2 Bodily injury;
 - 7.3.3 Death;
 - 7.3.4 Physical damage to tangible personal and/or real property; and/or
 - 7.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 7.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 7.6 Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.

- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
- 7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.

8. Approved Contract

- 8.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:
 - 8.1.1 Written notification made to proposers on **ITS** letterhead, or
 - 8.1.2 Notification posted to the **ITS** website for the project, or
 - 8.1.3 CP-1 authorization executed for the project, or
 - 8.1.4 The **ITS** Board's approval of same during an open session of the Board.
- 8.2 **ITS** statute specifies whether **ITS** Director approval or **ITS** Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
- 8.3 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the **ITS** Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the **ITS** Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.

9. Contract Validity

All contracts are valid only if signed by the Executive Director of **ITS**.

10. Order of Contract Execution

Vendors will be required to sign contracts and to initial all contract changes before the Executive Director of **ITS** signs.

11. Availability of Funds

All contracts are subject to availability of funds of the acquiring State entity and are contingent upon receipt by the winning Vendor of a purchase order from the acquiring State entity.

12. CP-1 Requirement

All purchase orders issued for goods and services acquired from the awarded Vendor under this RFP must be encoded by the Customer agency with a CP-1 approval number assigned by **ITS**. This requirement does not apply to acquisitions that by policy have been delegated to State entities.

13. Requirement for Electronic Payment and Invoicing

13.1 Payments to the awarded Vendor for all goods and services acquired under this RFP by state agencies that make payments through the Statewide Automated Accounting System (“SAAS”) will be made electronically, via deposit to the bank account of the Vendor’s choice. The awarded Vendor must enroll and be activated in PayMode™, the State’s current vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Vendor to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Vendors should visit the following website: <http://portal.paymode.com/ms/>. Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting mash@dfa.state.ms.us.

13.2 For state agencies that make payments through SAAS, the awarded Vendor is required to submit electronically all invoices for goods and services acquired under this RFP, along with appropriate supporting documentation, as directed by the State. Should the requirement for electronic invoicing be implemented during the term of the project contract, the State will work with the Vendor to determine a reasonable timeframe for initiating electronic invoicing.

13.3 Items 13.1 and 13.2 only apply to state agencies that make payments through SAAS. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.

14. Time For Negotiations

14.1 All contractual issues must be successfully negotiated within fifteen (15) working days from the Vendor’s initial receipt of the project contract from **ITS**, unless **ITS** consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of the Vendor’s response to this RFP. **ITS** may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.

- 14.2 Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new items that the State may require. All contract changes requested by the Vendor related to such exceptions noted in Vendor's proposal shall be submitted three (3) working days prior to scheduled negotiations, unless **ITS** consents to a different period.
15. **Prime Contractor**
The selected Vendor will be designated the prime contractor in the proposal, and as such, shall be solely responsible for all products/services offered in the proposal and for the fulfillment of the contract with the State.
16. **Sole Point of Contact**
ITS will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.
- 16.1 The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Vendor represents all contractors, third parties and/or subcontractors the Vendor has assembled for this project. The Vendor's commitments are binding on all such parties and consequently the State is only required to negotiate with the Vendor.
- 16.2 Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.
- 16.3 Should a proposing Vendor wish to assign payment of any or all charges resulting from this contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party's name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor's proposal and subsequently accepted by the State.

17. ITS Approval of Subcontractor Required

Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.

18. Inclusion of Subcontract Agreements

Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.

19. Negotiations with Subcontractor

In order to protect the State's interest, **ITS** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.

20. References to Vendor to Include Subcontractor

All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.

21. Outstanding Vendor Obligations

- 21.1 Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which **ITS** is the contracting agent and who has received written notification from **ITS** regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, **ITS** has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.
- 21.2 Any Vendor who is presently in default on existing contracts for which **ITS** is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.
- 21.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.

22. Equipment Condition

For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.

23. Delivery Intervals

The Vendor's proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.

24. Pricing Guarantee

The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.

25. Shipping Charges

For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.

26. Amortization Schedule

For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.

27. Americans with Disabilities Act Compliance for Web Development and Portal Related Services

All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.

28. Ownership of Developed Software

28.1 When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.

28.2 The State may be willing to grant the Vendor a nonexclusive license to use the State's software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.

29. **Ownership of Custom Tailored Software**

In installations where the Vendor's intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.

30. **Terms of Software License**

The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor's proposal.

31. **The State is Licensee of Record**

The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

32. **Compliance with Enterprise Security Policy**

Any solution proposed in response to this RFP must be in compliance with the State of Mississippi's Enterprise Security Policy. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and covers the following topics: web servers, email, virus prevention, firewalls, data encryption, remote access, passwords, servers, physical access, traffic restrictions, wireless, laptop and mobile devices, disposal of hardware/media, and application assessment/certification. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Vendor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

The Enterprise Security Policy is available to third parties on a need-to-know basis and requires the execution of a non-disclosure agreement prior to accessing the policy. The Vendor may request individual sections of the Enterprise Security Policy or request the entire document. Prior to the Vendor receiving the requested policy information, the Vendor must sign and submit the non-disclosure agreement found on the ITS website, <http://www.its.ms.gov>, as follows: click on the "ITS Services" button on the left of the screen; select "Information Security", scroll to the bottom of the page, and click on the link "Enterprise Security Policy" under "Policies and Plans". The form can be found at the "Enterprise Security Policy" link under the "Third Party" heading. The complete web address is shown below:

http://www.its.ms.gov/security/docs/confidentiality_agreement_for_its_esp_for_web.pdf
Vendor must provide contact information (name, email address, phone number) that can be used to coordinate the secure delivery of the requested information.

33. **Negotiating with Next-Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

34. **Disclosure of Proposal Information**

Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated. All disclosures of proposal information will be made in compliance with the **ITS** Public Records Procedures established in accordance with the Mississippi Public Records Act. The **ITS** Public Records Procedures are available in Section 019-010 of the **ITS** Procurement Handbook, on the **ITS** Internet site at: <http://dsitspe01.its.ms.gov/its/procman.nsf/TOC4?OpenView> or from **ITS** upon request.

As outlined in the Third Party Information section of the **ITS** Public Records Procedures, **ITS** will give written notice to any affected Vendor of a request to view or reproduce the Vendor's proposal or portion thereof. **ITS** will not, however, give such notice with respect to summary information prepared in connection with the State's review or evaluation of a Vendor's proposal, including, but not limited to, written presentations to the **ITS** Board or other approving bodies, and/or similar written documentation prepared for the project file. In addition, **ITS** will not provide third-party notice for requests for any contract executed as a result of this RFP, with the exception of information contained in contract exhibits identified and labeled as confidential during the contract negotiation process. **ITS** will provide third-party notice of requests for any such confidential exhibits to allow Vendor the opportunity to protect the information by court order as outlined in the **ITS** Public Records Procedures.

Summary information and contract terms, as defined above, become the property of **ITS**, who has the right to reproduce or distribute this information without notification.

Vendors should further be aware that requests for disclosure of proposal and contract information are sometimes received by **ITS** significantly after the proposal opening date. **ITS** will notify the signatory "Officer in Bind of Company" provided in Section I of this RFP for Notification of Public Records Requests in the event information is requested that your company might wish to consider protecting as a trade secret or as confidential commercial or financial information. If the "Officer in Bind of Company" should not be used for notification of public records requests, Vendor should provide the alternative contact information in response to this RFP item.

35. **Risk Factors to be Assessed**

The State will assess risk factors that may initially exist within a given procurement and that may develop over the course of a procurement process as facts become known. The State, at its sole discretion, may employ the following mechanisms in mitigating these risks: proposal bonding, performance bonding, progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. The Vendor must agree to incorporate any or all of the above terms and conditions into the customer agreement.

36. **Proposal Bond**

The Vendor is not required to include a proposal bond with its RFP proposal.

37. **Performance Bond/Irrevocable Bank Letter of Credit**

The Vendor must include the price of a performance bond or irrevocable bank letter of credit with its RFP proposal. The cost of the bond or letter of credit must be shown as a separate line item in the *Cost Information Submission*. The performance bond or letter of credit must be procured at the Vendor's expense prior to the execution of the contract and may be invoiced to Mississippi Department of Human Services after contract initiation only if itemized in the *Cost Information Submission* and in the executed contract. **The final decision as to the requirement for a Performance Bond or Irrevocable Bank Letter of Credit will be made upon contract award and is at the State's sole discretion.**

The Vendor must procure and submit to **ITS**, on behalf of **Mississippi Department of Human Services**, with the executed contract, (a) a performance bond from a reliable surety company authorized to do business in the State of Mississippi or (b) an irrevocable bank letter of credit that is acceptable to the State. The Performance Bond or the Irrevocable Letter of Credit shall be for the total amount of the contract or an amount mutually agreed upon by the State and the successful Vendor and shall be payable to **Mississippi Department of Human Services**, to be held by their contracting agent, the Mississippi Department of Information Technology Services. No contract resulting from this RFP will be valid until the required Performance Bond or Irrevocable Bank Letter of Credit has been received and found to be in proper form and amount. The Vendor agrees that the State has the right to request payment for a partial amount or the full amount of the Irrevocable Letter of Credit/Performance bond should the products/services being procured hereunder not be provided in a manner consistent with this RFP and the Vendor's proposal by the delivery dates agreed upon by the parties. The State may demand payment by contacting the bank issuing the letter of credit or the bonding company issuing the performance bond and making a written request for full or partial payment. The issuing bank/bonding company is required to honor any demand for payment from the State within fifteen (15) days of notification. The letter of credit/performance bond shall cover the entire contract period, with the exception of post-warranty maintenance and support, and shall not be released until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State's sole discretion, the State may, at any time during the warranty period, review Vendor's performance and performance of the products/services delivered and determine that the letter of credit/performance bond may be reduced or released prior to expiration of the full warranty period.

38. **Responsibility for Behavior of Vendor Employees/Subcontractors**

The Vendor will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Vendor employee or subcontractor acting in a manner determined by the administration of any State agency or institution to be detrimental, abusive, or offensive to any of the staff or student body of

any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

39. **Protests**

The Executive Director of **ITS** and/or the Board Members of **ITS** or their designees shall have the authority to resolve Vendor protests in connection with the selection for award of a contract. Copies of the protest procedures are available on the **ITS** Internet site - **ITS** Protest Procedure and Policy, Section 019-020, **ITS** Procurement Handbook at: <http://dsitspe01.its.ms.gov/its/procman.nsf/TOC4?OpenView> or from **ITS** upon request.

40. **Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the **ITS** Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the **ITS** Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify RFP number 3677.

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the **ITS** Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the full amount of the total estimated project lifecycle cost or \$250,000.00, whichever is less. The total estimated project lifecycle cost will be the amount used by **ITS** in the computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be notified in the event that the State is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Vendor's expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, **ITS** reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

Should the written protest submitted by the Vendor fail to comply with the content requirements of **ITS'** protest procedure and policy, fail to be submitted within the prescribed time limits, or fail to have the appropriate protest bond accompany it, the protest will be summarily dismissed by the **ITS** Executive Director.

41. **Mississippi Employment Protection Act**

Effective July 1, 2008, Vendor acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Vendor will agree to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State.

Vendor acknowledges and certifies that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi.

Vendor acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Vendor to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

SECTION V PROPOSAL EXCEPTIONS

Please return the *Proposal Exception Summary Form* at the end of this section with all exceptions to items in any Section of this RFP listed and clearly explained or state “No Exceptions Taken.” If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions to any item in this RFP document.

1. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this RFP, including a specification denoted with “shall” or “must,” as long as the following are true:
 - 1.1 The specification is not a matter of State law;
 - 1.2 The proposal still meets the intent of the RFP;
 - 1.3 A *Proposal Exception Summary Form* is included with Vendor’s proposal; and
 - 1.4 The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the *Proposal Exception Summary Form*.
2. The Vendor has no liability to provide items to which an exception has been taken. **ITS** has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and **ITS** will discuss each exception and take one of the following actions:
 - 2.1 The Vendor will withdraw the exception and meet the specification in the manner prescribed;
 - 2.2 **ITS** will determine that the exception neither poses significant risk to the project nor undermines the intent of the RFP and will accept the exception;
 - 2.3 **ITS** and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or
 - 2.4 None of the above actions is possible, and **ITS** either disqualifies the Vendor’s proposal or withdraws the award and proceeds to the next ranked Vendor.
3. Should **ITS** and the Vendor reach a successful agreement, **ITS** will sign adjacent to each exception which is being accepted or submit a formal written response to the *Proposal Exception Summary* responding to each of the Vendor’s exceptions. The *Proposal Exception Summary*, with those exceptions approved by **ITS**, will become a part of any contract on acquisitions made under this RFP.

4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard terms and conditions of the State's RFP, including the *Standard Contract* in Exhibit A, if included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this RFP, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.
6. For Vendors who have successfully negotiated a contract with **ITS** in the past, **ITS** requests that, prior to taking any exceptions to this RFP, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to **ITS** or participated in contract negotiations with **ITS** on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

PROPOSAL EXCEPTION SUMMARY FORM

List and clearly explain any exceptions, for all RFP Sections and Exhibits, in the table below.

| ITS RFP Reference | Vendor Proposal Reference | Brief Explanation of Exception | ITS Acceptance (sign here only if accepted) |
|--|--|---|--|
| (Reference specific outline point to which exception is taken) | (Page, section, items in Vendor's proposal where exception is explained) | (Short description of exception being made) | |
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |
| 6. | | | |
| 7. | | | |

SECTION VI RFP QUESTIONNAIRE

Please answer each question or provide the information as requested in this section.

1. **Statewide Automated Accounting System (SAAS) Information for State of Mississippi Vendor File**

- 1.1 **SAAS Vendor Code:** Any Vendor who has not previously done business with the State and has not been assigned a SAAS Vendor code should furnish a signed copy of an IRS W-9 form with the proposal. A copy of the W-9 Form can be obtained by going to the ITS website, <http://www.its.ms.gov>, clicking on the "Procurement" button to the left of the screen, selecting "Vendor Information", scrolling to the bottom of the page, and clicking on the link "Forms Required in RFP Responses." Vendors who have previously done business with the State should furnish ITS with their SAAS Vendor code.

SAAS Vendor Code: _____ OR Signed W-9 Form Attached: _____

- 1.2 **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Vendor review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Vendor will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at: http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf. Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at minority@mississippi.org.

Minority Vendor Self-Certification Form Included: _____
Minority Vendor Self-Certification Form Previously Submitted: _____
Not claiming Minority or Women Business Enterprise Status: _____

2. **Certification of Authority to Sell**

The Vendor must certify Vendor is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)

Remit Address (if different):

| |
|--|
| |
|--|

7. **Web Amendments**

As stated in Section III, **ITS** will use the **ITS** website to post amendments regarding RFPs before the proposal opening at http://www.its.ms.gov/rfps/rfps_awaiting.shtml. We will post clarifications until noon seven days prior to the proposal opening date listed on the cover page of this RFP or the posted extension date, if applicable.

Vendors may list any questions or items needing clarification discovered in the week prior to the proposal opening in a written format at the beginning of the proposal binder or in the comment section for the individual offering.

Does the Vendor certify that they have reviewed a copy of the **ITS** amendments for RFPs as above stated? (A yes or no answer is required.)

SECTION VII TECHNICAL SPECIFICATIONS

1. How to Respond to this Section

- 1.1 Beginning with Item 2.1 of this section, label and respond to each outline point in this section as it is labeled in the RFP.
- 1.2 The Vendor must respond with “ACKNOWLEDGED,” “WILL COMPLY” or “AGREED” to each point in this section. In addition, many items in this RFP require detailed and specific responses to provide the requested information. Failure to provide the information requested will result in the Vendor receiving a lower score for that item, or, at the State’s sole discretion, being subject to disqualification.
- 1.3 “ACKNOWLEDGED” should be used when no vendor response or vendor compliance is required. “ACKNOWLEDGED” simply means the vendor is confirming to the State that he read the statement. This is commonly used in the RFP sections where the agency’s current operating environment is described or where general information is being given about the project.
- 1.4 “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the vendor will adhere to the requirement. These terms are used to respond to statements that specify that a vendor or vendor’s proposed solution must comply with a specific item or must perform a certain task.
- 1.5 If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See Section V, for additional instructions regarding Vendor exceptions.)
- 1.6 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 1.7 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

2. Mandatory Provisions in Technical Requirements for this RFP

- 2.1 Certain items in the technical specifications of this RFP are MANDATORY. Vendors are specifically disallowed from taking exception to these mandatory requirements, and proposals that do not meet all mandatory requirements are subject to immediate disqualification, at the sole discretion of the State.
- 2.2 Participation in a Vendor Conference Call on Tuesday, April 10, 2012 at 10:00 a.m. CST is mandatory for any Vendor who intends to submit an RFP response. No exceptions will be granted to this requirement. Any proposal

received from a Vendor who did not have an authorized representative at the Vendor Conference will be rejected.

- 2.2.1 To access the mandatory Vendor Web Conference, Vendor must contact the Donna Hamilton via email no later than 3:00 p.m. Central Time, Monday, April 9, 2012, to receive instructions on how to enter into the web conference.

3. General Overview and Background

- 3.1 The Mississippi Department of Human Services Division of Early Childhood Care and Development (DECCD) is seeking a web-based, Commercial-Off-the-Shelf (COTS) Early Learning Management System for childcare. The mission of the Division of Early Childhood Care and Development is to provide subsidized child care assistance to eligible, low-income parent(s) that will enable them to become and remain employed, and to empower parent(s) to select quality child care that meets the needs of their family. DECCD administers a multitude of Federal grants awarded to subgrantees, also known as Technical Assistants (TA), that perform various services related to early childhood care and development. An Early Learning Management System would provide a centralized location to link data from various sources. The system would aid the Division in performing needs assessments for childcare providers, tracking performance of childcare providers, and assist subgrantees in creating performance improvement plans for childcare centers. The System would also provide a web-portal where childcare providers could log on to access training resources to assist them in improving their assessment scores and would also allow them to “shop” for items suggested by their assessment.

4. Procurement Project Schedule

| Task | Date |
|--|---|
| First Advertisement Date for RFP | 03/27/12 |
| Second Advertisement Date for RFP | 04/3/12 |
| Deadline to register for Vendor Conferemce | 3:00 p.m. Central Time on 04/09/2012 |
| Mandatory Vendor Conference | 10:00 a.m. Central Time on 04/10/12 |
| Deadline for Vendor's Written Questions | 3:00 p.m. Central Time on 04/16/12 |
| Deadline for Questions Answered and Posted to ITS Web Site | 04/20/12 |
| Open Proposals | 3:00 p.m. Central Time on 04/27/12 |
| Evaluation of Proposals | 04/30/12 - 05/11/12 |
| Vendor Demonstrations | 05/14/12 – 05/18/12 |
| Contract Negotiation | 05/21/12 – 06/08/12 |

5. Statement of Understanding

- 5.1 Vendors may request additional information or clarifications to this RFP using the following procedure:
- 5.1.1 Vendors must clearly identify the specified paragraph(s) in the RFP that is in question.
- 5.1.2 Vendor must deliver a written document to Donna Hamilton at ITS by April 16, 2012 at 3:00 p.m. Central Time. This document may be delivered by hand, mail, email, or fax. Address information is given on page one of this RFP. The fax number is (601) 713-6380. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS.** It is solely the responsibility of the vendor that the clarification document reaches **ITS** on time. Vendors may contact Donna Hamilton to verify the receipt of their document. Documents received after the deadline will be rejected.
- 5.2 All questions will be compiled and answered, and a written document containing all questions submitted and corresponding answers will be posted on the **ITS** web site by close of business on April 20, 2012.

6. Vendor Requirements

- 6.1 The Vendor must provide a description of his organization with sufficient information to substantiate proven expertise in the products and services being requested in this RFP. DECCD is seeking a COTS solution, ground-up development will not be considered.
- 6.2 The Vendor must disclose any company restructurings, mergers, and acquisitions over the past three (3) years.
- 6.3 The Vendor must specify the location of the organization's principal office and the number of executive and professional personnel employed at this office.
- 6.4 The Vendor must state the number of years the Vendor has been providing the products and services being proposed.
- 6.5 The Vendor must specify the organization's size in terms of the number of full-time employees, the number of contract personnel used at any one time, the number of offices and their locations, and structure (for example, state, national, or international organization).
- 6.6 The Vendor must provide the name and the state of incorporation, if incorporated.
- 6.7 The Vendor must indicate the number of implementations his company has performed for state/federal government entities which perform similar functions in their respective state/area/province as are required by this RFP.
- 6.8 The Vendor must describe the products and services being provided and the stage of development of those products and services.
- 6.9 The Vendor must provide a copy of their company's most recent annual report, including consolidated balance sheets and related statements of income, stockholders' or partners' equity and changes in financial position, for each of the three (3) fiscal years preceding the end of the most recent fiscal year. The financial information listed above should be compiled, reviewed, and/or audited by a Certified Public Accountant.
- 6.10 Vendor must provide an organizational chart identifying all personnel proposed for this project.
- 6.11 Vendor must provide a resume for each of their staff members participating on this project. Resumes must reflect qualifications and recent experience relevant to the scope of the work indicated in this RFP. Resumes must include at least three (3) references that can be directly contacted to verify the individual's qualifications and experience.

- 6.12 Vendor must ensure that each staff member assigned to this project has the ability to communicate clearly in the English language both verbally and in written form.

7. Functional Requirements

- 7.1 DHS desires to purchase a commercial-off-the-shelf (COTS) solution customized to support the needs of the State to meet the requirements listed in this RFP.

- 7.2 DHS desires to acquire a web-based Early Learning Management System for childcare hosted through the services of an experienced Applications Service Provider (ASP). Vendors are welcomed to propose a System that may be hosted locally. This in-house alternative is much less desirable than one provided through an ASP. As such, in-house alternatives will be given consideration only in the instance that the Agency finds no viable ASP-based solution through the RFP process. The State reserves the right to select a non-ASP solution.

7.3 Assessment

- 7.3.1 The proposed Solution must provide a centralized database for storing multiple types of assessments, checklists, program information, staff information, and other generally recognized childcare rating information.

7.3.1.1 The Vendor must provide a listing of the types of data collected, including the names of all assessment instruments.

7.3.1.2 The Vendor must describe the process for adding new information that is not currently collected.

- 7.3.2 The proposed Solution must provide the ability to enter assessment information via a web portal.

7.3.2.1 Vendor must list and provide version numbers for all supported browsers.

7.3.2.2 Vendor must discuss in detail all options, including necessary equipment, available for loading data into the proposed System. Vendor must include, as part of the discussion, the types of input devices supported (e.g., laptops, tablets, handhelds).

- 7.3.3 The proposed Solution must provide the ability to track and manage assessments assigned to Technical Assistants.
- 7.3.4 The proposed Solution must provide the ability to consolidate assessment information and apply DECCD calculations to assign ratings to childcare providers.
- 7.3.5 The proposed Solution must provide the ability to track the performance results of Child Care Providers over time.
- 7.3.6 Child Care Exchange Providers
- 7.3.6.1 The proposed Solution must provide the ability for Technical Assistants to use proprietary assessment instruments by providing an interface to the following Child Care Exchange Providers:
- Teacher's College Press
 - Child Care Exchange
 - Kaplan All About
- 7.3.6.2 The Vendor must explain in detail how the State will be charged for the use of these instruments.
- 7.3.7 The proposed Solution must provide the ability for Technical Assistants to create Quality Improvement Plans based on results from assessments.
- 7.3.7.1 The Vendor must describe in detail the tools provided to aid the Technical Assistant in working with Child Care Providers to improve their scores.
- 7.3.7.2 The proposed Solution must provide "shopping cart" type functionality that would allow Child Care Providers to choose items based on needs determined by assessments. This information will assist DECCD in providing services to Child Care Providers.
- 7.3.8 The proposed Solution must provide the ability for Technical Assistants to view the notes from previous assessments for individual Child Care Providers.
- 7.3.9 The proposed Solution must provide the ability to export data. Vendor must discuss in detail the formats and methods supported.

7.4 Child Care Providers

- 7.4.1 The proposed Solution must provide the ability for Child Care Providers to view their own assessment information.
- 7.4.2 The proposed Solution must provide training resources via the web-portal to assist childcare providers with needs identified during assessments. The proposed Solution must provide the ability for DECCD or approved subgrantees to post new training resources to the web-portal for childcare providers.

7.5 Reporting

- 7.5.1 The proposed Solution must provide the ability to create standard and ad-hoc reports based on the assessment information contained in the centralized database.
 - 7.5.1.1 The Vendor must describe the ability of the proposed Solution to store historical data for each childcare provider data and how long data is retained.
 - 7.5.1.2 The proposed Solution must provide the ability to perform statistical analysis on the data contained in the Solution.
 - 7.5.1.3 Vendor must provide a list of all standard reports provided with the Solution.
 - 7.5.1.4 The proposed system must possess a versatile, easy-to-use report generator. The Vendor must describe the report generator in detail and provide screen shots of user screens with the proposal.

7.6 Professional Development

- 7.6.1 The proposed Solution must provide the ability to create profiles for individual childcare provider staff.
- 7.6.2 The Solution must be able to track staff credentials and professional development. Vendor must provide details describing the features of this module and the type of information collected.

7.7 Upon contract award, the Vendor must work with DECDD in the:

- 7.7.1 Identification of potential users (e.g., DECCD staff, Technical Assistants, Childcare Center);

- 7.7.2 Identification and documentation of roles and responsibilities for each user type; and
 - 7.7.3 Identification and documentation of access rights associated with each user type and role.
 - 7.8 The proposed Solution must provide scheduling/calendar functionality for users of the system. Vendors must describe the available functionality, but at a minimum the System should allow Technical Assistants to schedule appointments with Child Care Providers, post community events, and training sessions.
 - 7.9 If any component(s) necessary for operation of the requested Solution is omitted from Vendor's proposal, Vendor must be willing to provide the component(s) at no additional cost.
- 8. **ASP Application Hosting Technical Requirements**

Vendor must fully describe the manner and degree by which their proposal meets the following minimum requirements. (As an alternative, Vendor may propose a System that the Agency would have to host in-house, see Item 9 below.)

 - 8.1 The Vendor must provide a services package consisting of application hosting, network telecommunications, applications and system software, pre-installation analysis and design, applications profiling, database migration, staff training, ongoing technical support and implementation of associated methods and procedures for the adaptation of the proposed System by the Agency.
 - 8.2 The Vendor must describe in detail how the application hosting services, software, bandwidth, security, backup and recovery are being proposed under the Vendor's ASP arrangement. This detail must include specifications and manufacturers of the System hardware, software, and network configuration being proposed. Software must include release and version numbers.
 - 8.3 The ASP host and network links must be configured with sufficient speed and capacity to support prime-shift end-users (8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday) and 24/7 public end-users.
 - 8.3.1 Vendor must discuss what assumptions were taken into account in devising the proposed ASP host and network configurations and consider the following information in developing assumptions:
 - 8.3.1.1 The primary end-users will consist of 100 Technical Assistants and up to 5 DECCD staff.

8.3.1.2 There are 1,750 licensed childcare providers; DECCD estimates that approximately 400 would use the Early Childhood Management System on a limited basis.

- 8.4 The Vendor must specify the minimum and recommended PC workstation, operating software and browser specifications necessary for the Agency and public end-users to access the System. Neither Agency nor public user workstations should require special client software.
- 8.5 Vendor must identify the maximum number of concurrent users and describe the maximum system load that the standard ASP host system will support.
- 8.6 Vendor must afford the Agency with adequate ASP facilities that will support their present staffing level with expandability to accommodate a 50% growth over the life of the hosting agreement.
- 8.7 Vendor must complete daily backups of the system and indicate how often these backups are tested each year.
- 8.8 Vendor must propose and adhere to a mutually agreed upon disaster recovery plan, as part of this project.
- 8.9 Vendor must provide the System under a service level agreement with a guaranteed uptime of at least 99%, 24 hours a day by 7 days a week, subject to credits or refunds for uptime of less than the guaranteed availability. In the event that the Agency is unable to achieve the 99% application availability for a given month, Vendor shall reimburse Agency 25% of the monthly ASP fee.
- 8.10 Vendor must agree that upon termination or expiration of the awarded contract that transition of operations from the Vendor to the Agency or to a successor ASP will be accomplished at no expense to the Agency, and with minimal interruption of the site's accessibility and insignificant changes in the site's appearance and functionality. The System database, together with all work-products developed by the Vendor for the Agency including: screens, forms, reports, documents and web pages shall remain the property of the State and shall be transferred to the Agency upon contract termination. Vendor must fully describe this process.

9. **Agency Hosted (In-house) Alternative Technical Requirements**

- 9.1 Vendors proposing an Agency hosted alternative must include a turnkey package consisting of applications and systems software, pre-installation analysis and design services, applications profiling, database migration, staff training, ongoing technical support and implementation of associated methods and procedures for the adaptation of the proposed System by the Agency. Under this alternative the Agency will be responsible for acquiring the

hardware and systems software necessary to host the applications software and network telecommunications.

- 9.2 The Vendor must describe in detail how the applications software, interfaces, bandwidth, security, backup and recovery are being proposed under this in-house hosted alternative. This detail must include specifications and manufacturers of the applications and system software and network configuration being proposed. Software must include release and version numbers.
- 9.3 The in-house host and network links must be configured with sufficient speed and capacity to drive the System loaded with prime-shift (8:00 a.m. to 5:00 p.m., Central Time, Monday through Friday) staff end-users and 24/7 public end-users. Vendor must discuss what assumptions were taken into account in devising the proposed host and network configurations.
- 9.4 The Vendor must specify the minimum and recommended PC workstation and browser specifications necessary for the Agency and public end-users to access the System as proposed. Neither Agency nor public user workstations should require special client software.
- 9.5 Vendor must identify the maximum number of concurrent users and describe the maximum system load that the in-house hosted system will support.
- 9.6 Vendor must afford the Agency with adequate software licenses to support their present staffing level with expandability to accommodate 50% growth over the life of the in-house alternative.
- 9.7 The Vendor must specify what degree of custom programming is being proposed in order for the in-house hosted system to meet the requirements of this RFP.

10. Security and Accessibility

- 10.1 Application security level will determine the level of access each individual has and what that individual will be allowed to view and perform on each screen or field of the application.
- 10.2 Application must provide functionality that supports multi-level security definition/ role-based security levels.
- 10.3 The proposed solution must prevent unauthorized access to the system and must allow the State to determine which modules, reports, and data users may access.
- 10.4 The system must provide application and menu level security and allow setup of inquiry, add, update, and delete access by user and/or group.

- 10.5 The proposed solution must allow the System Administrator to set rights for access of data by individual or group.
- 10.6 The system must provide functionality that supports the assignment of security levels globally, by group and individual user.
- 10.7 The Vendor must discuss the responsibility/process for initial system setup versus ongoing administration of day to day operations. Vendor should include as part of the description, a discussion of the administrative functions that would be performed by MDHS as opposed to the Vendor.
- 10.8 Vendor must provide the password rules and standards provided in the proposed solution. At a minimum, Vendor must describe how many and what type characters are required for the creation of a valid password, password aging, and password lockout.

11. Acceptance Testing

- 11.1 Vendor must work with the Agency staff to devise a suite of test and use cases, and test data necessary to prove the performance of the proposed System. This suite must include final acceptance testing criteria.
- 11.2 The Agency will conduct acceptance testing of the System once the System is made available for use to the Agency and all training is completed.
- 11.3 The Vendor must participate in the acceptance testing of the System by providing technical staff on-site for assistance in demonstrating the functions of the installed System. The Agency must be in a position to demonstrate that the System is operational to ensure that proper training has been received and sufficient knowledge transfer has been accomplished.
- 11.4 As part of the System acceptance testing, the vendor must assist the Agency in performing a load test to confirm that the ASP host and network configuration possess adequate capacity and speed to drive the Early Learning Management System and user base without degradation.
- 11.5 The Agency will communicate to the Vendor regarding any deficiencies identified during either functional or load testing. The Vendor must correct deficiencies within ten (10) days of written notice given by the State. The Vendor must bear the cost to remedy reported deficiencies. These deficiencies must be corrected and tested by the Vendor before submitting the remedy to the Agency for performance or regression testing.
- 11.6 The Vendor must agree to and allow for a final acceptance testing period of up to thirty (30) business days from the initiation of acceptance testing and correction of any deficiencies reported by the State.

- 11.7 Acceptance testing is finished when the Agency has successfully completed all acceptance test criteria defined in the testing suite as defined by the Agency; and all critical defects have been corrected by the Vendor and successfully re-tested by the Agency and operated without error or defect for the thirty (30) day acceptance period.
- 11.8 Acceptance testing shall not in any way relieve the Vendor of their responsibilities to correct any defect identified during the warranty period.
- 11.9 The State reserves the right to reject the System after the third unsuccessful test of any module of the System.

12. Support Requirements

- 12.1 Vendor must respond by telephone within one (1) hour to requests for support services. The Agency must be given priority placement in the support queue for all System locking situations or problems claimed by Agency to be a mission critical process.
- 12.2 Upon receipt of the Agency's call, Vendor must create a trouble ticket, assign a severity level and attempt to resolve the System problem in accordance with the procedures and processes for problem resolution detailed below. The Agency and Vendor must mutually agree on whether a problem is classified as a Severity Level 1, 2, or 3 problem.
 - 12.2.1 Severity Level 1 implies that the System is not functioning. Some examples of Severity Level 1 System problems are: System is down and will not restart; or System is not able to communicate with external systems or users; or System is generating a data corruption condition.
 - 12.2.2 Vendor must resolve Severity Level 1 System problems within one (1) business day, or within a mutually agreed upon time frame.
 - 12.2.3 Severity Level 2 implies that an essential function does not work as documented, or testing and usage can continue but the task cannot be completed, and no workarounds exist.
 - 12.2.4 Vendor must resolve Severity Level 2 System problems within two (2) business days, or within a mutually agreed upon time frame.
 - 12.2.5 Severity Level 3 implies a System problem such that implementations of functions do not match specifications and/or technical documentation, and a workaround may exist.
 - 12.2.6 Vendor must resolve Severity Level 3 System problems within ten (10) business days, or within a mutually agreed upon time frame.

13. Project Management

- 13.1 Vendor must commit a dedicated Project Manager for the duration of the project implementation. The Project Manager must have sufficient prior experience to address the specifics of this project. Vendor must include details to substantiate this experience.
- 13.2 The Project Manager must be named in the Vendor's RFP response and must be available for interview by the Agency as part of this RFP evaluation.
- 13.3 Vendor must submit, as a part of this proposal, a high-level Project Work Plan that outlines the overall strategy and approach to providing the requested System and services. The Plan must contain all significant work steps required for provision of the requested services. Timeframes must be specified in terms of work days or weeks after contract signing. The Plan must include the elements listed below.
 - 13.3.1 The Plan must incorporate all tasks to be accomplished;
 - 13.3.2 The Plan must address all project deliverables, including implementation, acceptance testing, schedule for actual testing and *go-live* date;
 - 13.3.3 The Plan must include resource estimates for both the Agency and Vendor timelines; and
 - 13.3.4 The Plan must address assumptions that the Vendor has made based on the information rendered in these specifications.
- 13.4 Upon contract award, the Vendor's Project Manager must work with the Agency to develop a more detailed Project Work Plan to guide the System's implementation.
- 13.5 The Vendor must describe his change order and staffing strategy under the following circumstances.
 - 13.5.1 The Vendor must describe his change order and staffing strategy when a customer requires additional functionality that may be within the capability of the proposed system's existing programming, after the initial system acceptance.
 - 13.5.2 The Vendor must describe his change order and staffing strategy when a customer requires additional functionality that may require modification of the proposed system's programmed code and/or the addition of new programming, after initial system acceptance.

14. Warranty and Maintenance Requirements

14.1 Product Warranty

Vendor must warrant that the proposed System shall meet or exceed these minimum specifications.

14.1.1 Vendor must warrant that all deliverables shall be free from any defect which would render any such deliverable inoperable or which would prevent full performance in accordance with these specifications. This warranty includes correction of errors, design deficiencies, performance deficiencies, and incorrect or defective documentation, including those found during acceptance testing, implementation, and the warranty period.

14.1.2 Vendor must propose the standard manufacturer warranty for all proposed software products and services. Vendor must specify the warranty period, during which time maintenance need not be paid. Warranty must cover, at minimum, one (1) hour response to all service-related calls or e-mails during prime-shift hours (8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday. Vendor must describe the proposed warranty.

14.1.3 Vendor must also specify whether extended warranty is being proposed to satisfy these requirements and include the associated period and cost.

14.2 Product Maintenance and Software Support

14.2.1 Vendor must propose an annual fixed cost contract to provide ongoing software support services to include problem remediation, maintenance and upgrades. Support must include toll-free telephone support during the hours of 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday. Vendor must describe the proposed plan.

14.2.2 Vendor must maintain the products in an operable condition according to the specifications contained in the technical manuals and as outlined in these specifications and the Vendor's System proposal.

14.3 Vendor must provide the Agency with enhancements and updates to the software as they are made generally available.

15. Training

- 15.1 Vendor must propose multi-level training for up to 100 Agency staff and two (2) administrators. Vendor must train a designated staff person in all aspects of systems administration for the proposed System. Agency staff must be trained in the competent use of the Early Learning Management System.
- 15.2 Vendor must describe the proposed training plan to include class objectives, scope, length of each class, class size and subject materials to be taught, and identify the costs associated with this requirement.
- 15.3 In addition, Vendor must furnish a training tutorial that will enable a new employee to perform system-related functions from day one of employment. This tutorial must take the employee through a stepwise introduction of each task necessary to perform any function of the system. The tutorial must be updated with each update the Vendor makes to their application software.

16. Additional Requirements

- 16.1 ITS acknowledges that the specifications within this RFP are not exhaustive. Rather, they reflect the known requirements that must be met by the proposed system. Vendors must specify, here, what additional components may be needed and are proposed in order to complete each configuration.

17. Scoring Methodology

- 17.1 An Evaluation Team composed of DECCD and **ITS** staff will review and evaluate all proposals. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals.
 - 17.1.1 Each category included in the scoring mechanism is assigned a weight between one and 100.
 - 17.1.2 The sum of all categories, other than Value-Add, equals 100 possible points.
 - 17.1.3 Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgment of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of additional points. A Value-Add rating between 0 and 5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.
 - 17.1.4 For the evaluation of this RFP, the Evaluation Team will use the following categories and possible points:

| Category | Possible Points |
|---|------------------------|
| Non-Cost Categories: | |
| Functional & Solution Platform Requirements | 35 |
| Support, Warranty & Training Requirements | 15 |
| Vendor, Security, & Acceptance Requirements | 10 |
| Total Non-Cost Points | 60 |
| Cost | 40 |
| Total Base Points | 100 |
| Value Add | 5 |
| Maximum Possible Points | 105 |

17.2 The evaluation will be conducted in four stages as follows:

17.2.1 Stage 1 – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the RFP requirements to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFP with regard to content, organization/format, Vendor experience, number of copies, bond requirement, timely delivery, and must be responsive to all mandatory requirements. No evaluation points will be awarded in this stage. Failure to submit a complete proposal may result in rejection of the proposal.

17.2.2 Stage 2 – Non-cost Evaluation (all requirements excluding cost)

17.2.2.1 Non-cost categories and possible point values are as follows:

| Non-Cost Categories | Possible Points |
|---|------------------------|
| Functional & Solution Platform Requirements | 35 |
| Support, Warranty & Training Requirements | 15 |
| Vendor, Security, & Acceptance Requirements | 10 |
| Maximum Possible Points | 60 |

17.2.2.2 Proposals meeting fewer than 80% of the requirements in the non-cost categories may be eliminated from further consideration.

17.2.2.3 ITS scores the non-cost categories on a 10-point scale, with 9 points for meeting the requirement. The 'Meets Specs' score for each category is 90% of the total points allocated for that category. For example, the 'Functional and Solution Platform' category was allocated 35 points; a proposal that fully met all requirements in that section would have scored 31.5 points. The additional 10% is used for a proposal that exceeds the requirement for an item in a way that provides additional benefits to the state.

17.3 Stage 3 – Cost Evaluation

17.3.1 Points will be assigned using the following formula:

$$(1 - ((B - A) / A)) * n$$

Where:

A = Total lifecycle cost of lowest valid proposal

B = Total lifecycle cost of proposal being scored

n = Maximum number of points allocated to cost for acquisition

17.3.2 Cost categories and maximum point values are as follows:

| Cost Category | Possible Points |
|--------------------------------|------------------------|
| Lifecycle Cost | 40 |
| Maximum Possible Points | 40 |

17.4 Stage 4 – Selection of the successful Vendor

17.4.1 On-site Demonstrations and Interviews

17.4.1.1 At the discretion of the State, evaluators may request interviews, on-site presentations, demonstrations or discussions with any and all Vendors for the purpose of system overview and/or clarification or amplification of information presented in any part of the proposal.

- 17.4.1.2 If requested, Vendors must be prepared to make on-site demonstrations of system functionality and/or proposal clarifications to the evaluation team and its affiliates within seven calendar days of notification. Each presentation must be made by the project manager being proposed by the Vendor to oversee implementation of this project.
- 17.4.1.3 Proposed key team members must be present at the on-site demonstration. The evaluation team reserves the right to interview the proposed key team members during this onsite visit.
- 17.4.1.4 Although on-site demonstrations may be requested, the demonstration will not be allowed in lieu of a written proposal.

17.4.2 Site Visits

- 17.4.2.1 At the State's option, Vendors that remain within a competitive range must be prepared to provide a reference site within seven calendar days of notification. If possible, the reference site should be in the Southeastern region of the United States. Vendor must list potential reference sites in the proposal.

- 17.5 Final Quantitative Evaluation - Following any requested presentations, demonstrations, and/or site visits, the Evaluation Team will re-evaluate any technical/functional scores as necessary. The technical/functional and cost scores will then be combined to determine the Vendor's final score.

SECTION VIII COST INFORMATION SUBMISSION

Vendors must propose a summary of all applicable project costs in the matrix that follows. The matrix must be supplemented by a cost itemization fully detailing the basis of each cost category. The level of detail must address the following elements as applicable: item, description, quantity, retail, discount, extension, and deliverable. Any cost not listed in this section may result in the Vendor providing those products or services at no charge to the State or face disqualification.

Vendors must use the appropriate table to list costs depending on whether they are proposing an ASP solution or the alternative agency-hosted option.

ASP Solution

| Description | Quantity | Unit Cost | Extended Cost |
|--|----------|-----------|---------------|
| NOTES ON SOFTWARE COSTS: 1. Vendor must specify licensing method (concurrent users, named users, enterprise license, etc.) 2. Any licensing requirements to accommodate a training environment must be clearly specified. 3. Vendor must specify frequency of ASP billing (annually, monthly, per transaction, etc.) | | | |
| One-Time Costs | | | |
| <i>Software license fee:</i> | | | |
| Early Learning Management System | | \$ | \$ |
| | | \$ | \$ |
| <i>Software Installation/Implementation Services (fully loaded with travel, subsistence and associated per diem costs)</i> | | | |
| <i>Break out costs by:</i> | | | |
| Pre-installation (Requirements Analysis, System Design, Profiling, Database Conversion and other related costs) | | \$ | \$ |
| Implementation Costs | | \$ | \$ |
| Other Costs (specify) | | \$ | \$ |
| | | | |
| <i>Training/Knowledge Transfer Costs:</i> | | | |
| Internal-User Training (up to 100) | | \$ | \$ |
| Administrator Training –system controls, security, interfaces and configuration (1-2) | | \$ | \$ |

| Recurring Costs | | | |
|---|-----------|----|----|
| Annual Hosting Fee (5 years) | | | |
| Year 1 | | \$ | \$ |
| Year 2 | | \$ | \$ |
| Year 3 | | \$ | \$ |
| Year 4 | | \$ | \$ |
| Year 5 | | \$ | \$ |
| Maintenance and Support Costs (4 years with 1 year free warranty) 8:00 A.M. to 5:00 P.M. Central Time, Monday through Friday | | \$ | \$ |
| Year 2 | | \$ | \$ |
| Year 3 | | \$ | \$ |
| Year 4 | | \$ | \$ |
| Year 5 | | \$ | \$ |
| Miscellaneous Costs (must specify) | | \$ | \$ |
| | | \$ | \$ |
| Cost of obtaining performance bond if Bank Letter of Credit not utilized | | \$ | \$ |
| Tiered software license cost (for additional licenses if enterprise license not quoted – guaranteed rate for two years following Phase I system acceptance) | 25 users | \$ | \$ |
| | 50 users | \$ | \$ |
| | 100 users | \$ | \$ |
| | | | |
| Change Order Rate according to position: | | | |
| | | \$ | \$ |
| | | \$ | \$ |
| | | \$ | \$ |
| | | \$ | \$ |

Agency-hosted Alternative

| Description | Quantity | Unit Cost | Extended Cost |
|---|-----------|-----------|---------------|
| Software Costs: | | | |
| Software license fee (one-time perpetual) | | | |
| Early Learning Management System | | \$ | \$ |
| | | \$ | \$ |
| Software Installation/Implementation Services (fully loaded with travel, subsistence and associated per diem costs) Break out costs by: | | | |
| Pre-installation (Requirements Analysis, System Design, Profiling, Database Conversion and other related costs) | | | |
| Implementation Costs | | \$ | \$ |
| Other Costs (specify) | | | |
| Hardware Costs: | | | |
| Please list | | \$ | \$ |
| Training/Knowledge Transfer Costs | | | |
| Internal-User Training (5-6 students) | | \$ | \$ |
| Administrator Training –system controls, security, interfaces and configuration (1-2 students) | | \$ | \$ |
| Warranty and Maintenance Costs | | | |
| Maintenance and Support Costs (4 years with 1 year free warranty) 8:00 A.M. to 5:00 P.M. Central Time, Monday through Friday | | \$ | \$ |
| Year 2 | | \$ | \$ |
| Year 3 | | \$ | \$ |
| Year 4 | | \$ | \$ |
| Year 5 | | \$ | \$ |
| Miscellaneous Costs (must specify) | | \$ | \$ |
| | | \$ | \$ |
| Cost of obtaining performance bond | | \$ | \$ |
| Tiered software license cost (for additional licenses if enterprise license not quoted – guaranteed rate for two years following Phase I system acceptance) | 25 users | \$ | \$ |
| | 50 users | \$ | \$ |
| | 100 users | \$ | \$ |
| | | | |
| Change Order according to position: | | | |
| | | \$ | \$ |
| | | \$ | \$ |
| | | \$ | \$ |
| | | \$ | \$ |

SECTION IX REFERENCES

Please return the following Reference Forms, and if applicable, Subcontractor Reference Forms.

1. References

- 1.1 The Vendor must provide at least 3 references consisting of Vendor accounts that the State may contact. Required information includes customer contact name, address, telephone number, email address, and engagement starting and ending dates. Forms for providing reference information are included later in this RFP section. The Vendor must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Vendor intercession.
- 1.2 Any of the following may subject the Vendor's proposal to being rated unfavorably relative to these criteria or removed from further consideration, at the State's sole discretion:
 - 1.2.1 Failure to provide reference information in the manner described;
 - 1.2.2 Inability of the State to substantiate minimum experience or other requirements from the references provided;
 - 1.2.3 Non-responsiveness of references to the State's attempts to contact them; or
 - 1.2.4 Unfavorable references that raise serious concerns about material risks to the State in contracting with the Vendor for the proposed products or services.
- 1.3 References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
 - 1.3.1 The reference installation must be for a project similar in scope and size to the project for which this RFP is issued;
 - 1.3.2 The reference installation must have been operational for at least six (6) months.
- 1.4 The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, including the procuring agency and/or other agencies or institutions of the State, even if that customer is not included in the Vendor's list of references, and to utilize such information in the evaluation of the Vendor's proposal.

- 1.5 Unless otherwise indicated in the Scoring Methodology in Section VII, reference information available to the State will be used as follows:
 - 1.5.1 As documentation supporting mandatory experience requirements for companies, products, and/or individuals, as required in this RFP;
 - 1.5.2 To confirm the capabilities and quality of a Vendor, product, or individual for the proposal deemed lowest and best, prior to finalizing the award.
- 1.6 The State reserves the right to forego reference checking when, at the State's sole discretion, the evaluation team determines that the capabilities of the recommended Vendor are known to the State.

2. Subcontractors

The Vendor's proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and three (3) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.

Unless otherwise noted, the requirements found in the References section may be met through a combination of Vendor and subcontractor references and experience. Vendor's proposal should clearly indicate any mandatory experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate from further consideration proposals in which the prime Vendor does not, in the State's sole opinion, provide substantive value or investment in the total solution proposed. (i.e. the State does not typically accept proposals in which the prime Vendor is only a brokering agent.)

REFERENCE FORM

Complete 3 Reference Forms.

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

Description of product/services/project, including start and end dates:

| |
|--|
| |
|--|

SUBCONTRACTOR REFERENCE FORM

Complete a separate form for each subcontractor proposed.

Contact Name:
Company name:
Address:
Phone #:
E-Mail:

Scope of services/products to be provided by subcontractor:

| |
|--|
| |
|--|

Complete three (3) Reference Forms for each Subcontractor.

Contact Name:
Company name:
Address:
Phone #:
E-Mail:

Description of product/services/project, including start and end dates:

| |
|--|
| |
|--|

**EXHIBIT A
STANDARD CONTRACT**

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor to execute a contract with **ITS**. The inclusion of this contract does not preclude **ITS** from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to the projects covered by this RFP.

If Vendor cannot comply with any term or condition of this Standard Contract, Vendor must list and explain each specific exception on the *Proposal Exception Summary Form* included in Section V.

**PROJECT NUMBER 39356
SOFTWARE LICENSE AND APPLICATION SERVICE PROVIDER AGREEMENT
BETWEEN
INSERT VENDOR NAME
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
MISSISSIPPI DEPARTMENT OF HUMAN SERVICES**

This Software License and Application Service Provider Agreement (hereinafter referred to as "Agreement") is entered into by and between, **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT VENDOR ADDRESS** (hereinafter referred to as "Licensor"), and Mississippi Department of Information Technology Services having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the Mississippi Department of Human Services, located at 750 North State Street, Jackson, Mississippi 39202 (hereinafter referred to as "Licensee" and/or "MDHS"). ITS and MDHS are sometimes collectively referred to herein as "State."

WHEREAS, MDHS, pursuant to Request for Proposals ("RFP") No. 3677 requested proposals for the services of a contractor to host and maintain an Application Service Provider ("ASP") solution for a web-based early learning management System; and

WHEREAS, Licensor was the successful proposer in an open, fair and competitive procurement process to provide the software and services described herein;

NOW THEREFORE, in consideration of the mutual understandings, promises and agreements set forth, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 “Active User” means MDHS employees, subgrantees of MDHS, and childcare providers actively participating on the system in any given month of operation, who shall be bound to the terms and conditions of this Agreement. Licensor does not impose a limit on the number of Active Users accessing or registering to use the system.

1.2 “Available Date” means the date upon which Licensor notifies MDHS that the Software may be accessed on the Licensor’s ASP server and MDHS may begin acceptance testing.

1.3 “Content” means any content provided by or through Active Users for use with the Software.

1.4 “Documentation” means the published user and technical manuals and documentation that Licensor makes generally available for the Software; the help files included within the Software, and any files containing presentation materials or manuals or other related materials to train and educate Licensee and the Active Users on the use of the Software.

1.5 “Enhancements” means the corrections, updates, upgrades or new versions of the Software or Documentation that Licensor may provide to Licensee under this Agreement.

1.6 “Licensee” means the Mississippi Department of Human Services, its employees, subgrantees of MDHS, and any third party consultants or outsourcers engaged by MDHS who have a need to know and who shall be bound by the terms and conditions of this Agreement.

1.7 “Licensor” means **INSERT VENDOR NAME**, and its successors and assigns.

1.8 “Products” means the Software, Documentation, Corrections, Enhancements and any copy of the Software, Documentation, Corrections, or Enhancements provided by the Licensor.

1.9 “Services” means any on-line user access, customizations, interface development, consulting, education, ASP installation, system administration, training, maintenance, support, and Help Desk services provided by Licensor to Licensee.

1.10 “Software” means the machine-readable object code version of the computer programs whether embedded on disc, tape or other media used for the management of the web-based early learning management System and Supported Interfaces (and any Documentation and help files within the Software), including any Enhancements provided pursuant to the maintenance and support terms identified herein.

1.11 “Software Error” means a reproducible defect or combination thereof in the Software that results in a failure of the Software when used in accordance with the Documentation. Software Errors do not include those errors caused by (a) Licensee’s negligence, (b) any unauthorized modification or alteration Licensee makes to the Software, (c) data that does not conform to Licensor’s specified data format, (d) operator error, or (e) use not conforming to the Licensor’s supported technical environment specified in the Documentation.

1.12 “Supported Interfaces” means application-based interfaces (API), network protocols, data formats, database schemas, and file formats used in the Software as described in the Documentation.

ARTICLE 2 PERIOD OF PERFORMANCE

2.1 Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, this Agreement shall begin on the date it is signed by all parties and shall continue in effect until the Licensor completes all tasks required herein pursuant to the project work plan, including services during the five (5) year hosting term. The web-based early learning management system, as customized for the State of Mississippi, must be implemented; fully functional; accepted by MDHS, and all tasks (excluding hosting) required herein, including but not limited to development of required interfaces and training, completed on or before **INSERT COMPLETION DATE**, unless a change in this date is mutually agreed to in writing by the State and the Licensor. At the end of the five (5) year initial ASP services term, the ASP services may, upon the written agreement of the parties, be renewed under the same terms and conditions for one (1) additional term. One hundred and eighty (180) days prior to the expiration of the initial hosting term or any renewal hosting term of this Agreement, Licensor shall notify MDHS and ITS of the impending expiration and MDHS shall have sixty (60) days in which to notify Licensor of its intention to either renew or cancel the ASP services.

2.2 This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by MDHS following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Document.

ARTICLE 3 SCOPE OF SERVICES

3.1 The Licensor agrees to provide to MDHS an ASP based early learning management system and Services and associated deliverables required to provide, host and maintain a web based application for MDHS as described in this Agreement. While the scope of work for this project is defined by the contract documents set forth herein in the article titled “Entire Agreement”, a summary of such work is outlined in Article 3.5 below.

3.2 The Licensor acknowledges that MDHS intends to be actively involved in the day-to-day progress of the project. The Licensor agrees to (a) obtain MDHS’s approval of all tasks and the

time schedule for completion of said tasks prior to commencing performance, if not already contained in the approved project work plan; (b) make available to the State project team members all project work papers and work-in-progress for review; (c) ensure that the Licensor Project Manager works closely together with the State Project Manager, (d) provide MDHS access to the host website; (e) meet with MDHS on a regular basis at a mutually agreeable time, and as otherwise requested by MDHS, to discuss the status of the project, and (f) if required by MDHS, submit written project status reports.

3.3 The parties understand and agree that the project shall be structured with interim deliverables as set forth in the agreed upon project work plan so as to allow MDHS an opportunity to accept or reject the deliverables, including but not limited to, specifications, requirement definitions, process designs, data analyses, web layouts, screen layouts, and report layouts. The actual customizations shall not begin until after MDHS has communicated its conceptual approval of the results the Licensor plans to provide. MDHS shall have ten (10) business days to review interim materials, which review period can only be reduced by mutual agreement of the Licensor and MDHS.

3.4 It is understood by the parties that the project work plan must be in place within fifteen (15) business days of execution of this Agreement and prior to any other work being performed. Once this mutually agreed upon project work plan, which will identify specific time frames and deliverable target dates for this project, has been developed, it will be incorporated into and made a part of this Agreement. The dates in the project work plan will define the agreed upon period of performance. The parties acknowledge that the project work plan will evolve and change from time to time upon the mutual written agreement of both parties. The parties agree that the deliverables and schedule set forth in the latest version of the project work plan will take precedence over any prior plans.

3.5 Licensor shall be responsible for the following:

- A.** Ensuring that all deliverables are complete and accepted by MDHS pursuant to the mutually agreed upon project work plan;
- B.** Ensuring that the host site complies with PriorityOne of the World Wide Web Consortium's (W3C's) Web Accessibility Initiative and guidelines in Section 508 of the Rehabilitation Act that are not covered in W3C Priority;
- C.** Ensuring that the site is accessible through MDHS's published universal resource locator ("URL") rather than through Licensor's site address;
- D.** Reviewing with MDHS the Content a minimum of once a quarter to ensure that the Content remains timely and accurate and reaching an agreement with MDHS as to reasonable timelines for implementing Content updates delivered to the Licensor that will be posted on the site;

- E.** Tracking date sensitive items to ensure timely updates;
- F.** All Content provided by the Licensee and collected by the Software shall remain the sole and exclusive property of the Licensee. Upon the termination or expiration of this Agreement, Licensor shall provide such Content in its possession to the Licensee pursuant to a mutually agreed upon release schedule;
- G.** Working with MDHS to achieve access rates that meet MDHS's needs;
- H.** Providing security for the host site that is agreeable to MDHS with Licensor responsible for all necessary equipment and software related to security;
- I.** Maintaining the accessibility of the site twenty-four (24) hours a day, seven (7) days a week at an uptime rate of 99% or greater, subject to the limitations set forth in this Agreement, including but not limited to, those in Article 4.4;
- J.** Completing daily backups of the site;
- K.** Notifying MDHS at least three (3) business days prior to any anticipated service interruption, with said notice containing a general description of the reason for the service interruption;
- L.** Proposing and adhering to a disaster recovery plan and providing access to such plan to the State, all at Licensor's expense;
- M.** Participating with MDHS in disaster recovery planning and testing based on a mutually agreed upon schedule;
- N.** Maintaining the confidentiality of the data entered;
- O.** Providing MDHS access to all of the technical information concerning operation of the site, including but not limited to, server specifications, Internet connection information, personnel requirements and software implementations;
- P.** Identifying any commercially available software, by vendor and version number, integrated into the Products and describing the particular functionality of any software that is proprietary to the Licensor;
- Q.** Maintaining the host site, with the cost for such support, maintenance, and hosting for years following the initial five (5) year period not increasing annually beyond five percent (5%) or the percent increase in the consumer price index for all Urban Consumers, US City Average (C.P.I.-U) for the preceding year, whichever is less;
- R.** Providing 24x7x365 support of the web site, including sub-domain support;
- S.** Providing redundant internet connections;
- T.** Providing Dual T1 or greater connectivity;
- U.** Providing FTP and remote configuration access;
- V.** Providing SSL secure server support;
- W.** Providing monthly reports containing line utilization, site availability statistics, network usage, security user access reports and system performance data to MDHS;
- X.** Maintaining sufficient bandwidth and server capacity to meet MDHS and Active Users' demand as it may fluctuate and increase during the term of this Agreement, and
- Y.** Ensuring that upon termination or expiration of this Agreement that transition of

the site from the Licensor to MDHS or to a successor host will be accomplished at no expense to MDHS, and with minimal interruption of the site's accessibility and insignificant changes in the site's appearance and functionality.

3.6 In the event Licensor creates any revisions to or upgrades of the system, Licensor shall provide Licensee thirty (30) days written notification of such revision or upgrade, and shall, upon request of Licensee, furnish such revision or upgrade to Licensee free of charge as part of the ASP fees.

ARTICLE 4 SCOPE OF LICENSE AND HOSTING SERVICES

4.1 Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive and non-transferable license to access the Software over the Internet and to use it for Licensee's business operations and use it on the Licensor's host server for the initial term of the Agreement and any subsequent renewal hosting terms in accordance with, and subject to, the terms and conditions set forth in this Agreement. Licensee and Active Users are granted access to the Software, Products and Services twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty five (365) days a year, subject to regularly scheduled maintenance and required repairs. The terms and conditions of this Agreement will apply to any Enhancements or additional Software Products Licensee may procure from Licensor.

4.2 Licensor will provide Licensee storage space on and access to Licensor's Software via the Internet and provide Internet access to the Software to the Active Users through Licensor's site ("ASP Services").

4.3 In connection with the ASP Services, Licensor will provide and maintain all Software and hardware, including, but not limited to, the server hardware and software, telecommunications hardware and software, security hardware and software and other software that is reasonably necessary to operate and maintain the Software.

4.4 The Software will be accessible at least ninety nine percent (99%) of the time, twenty-four (24) hours a day, seven (7) days a week, except for scheduled maintenance and required repairs, and except for any loss or interruption of the ASP Services due to causes beyond the control of Licensor. In the event that MDHS or an Active User is unable to achieve the 99% application availability during any given month, excluding scheduled maintenance, required repairs, and unavailability due to causes beyond the control of Licensor, the Licensor shall reimburse MDHS twenty five percent (25%) of the monthly ASP hosting fees for each twenty-four (24) hour day during which there were any incidents of unavailability. Licensor shall maintain the server at a secured location with restricted access.

4.5 Licensor shall provide the Licensee with its standard managed firewall service, which

shall enable secure delivery of Licensor's application services using fully redundant hardware-based firewalls. Licensor's managed firewall service will be available twenty-four (24) hours a day, seven (7) days a week.

4.6 The use of the Software by Active Users will be governed solely by the terms and conditions of this Agreement.

4.7 Licensor acknowledges that the Content is and shall remain the sole and exclusive property of Licensee. Further, Licensor acknowledges that the Content may contain valuable trade secrets of Licensee and Licensor agrees to maintain the confidentiality of the Content and shall not make the Content publicly available except as may be necessary in performing the ASP Services.

4.8 Licensee acknowledges that the Software Products shall remain the exclusive property of Licensor. Licensee agrees that except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble or reverse engineer any of the Software without the prior written consent of Licensor.

ARTICLE 5 DELIVERY; RISK OF LOSS, AND ACCEPTANCE

5.1 Licensor shall deliver, install, and make available the Software and Documentation to the Licensor's hosting environment, except as otherwise specified, and pursuant to the delivery schedule mutually agreed to by the parties.

5.2 Licensor shall assume and bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout Licensor's possession thereof.

5.3 MDHS shall have thirty (30) business days after the Available Date to evaluate and conduct the final acceptance testing of the Software to confirm that it performs without any defects and performs in accordance with the requirements of this Agreement. MDHS shall immediately thereafter notify Licensor of any defects in the Software, which must be corrected. Thereafter, Licensor shall have ten (10) business days in which to either repair or replace the defective Software unless both parties agree to extend this period, all at Licensor's expense. In the event Licensor is unable to repair or replace the Software within this ten (10) day period, MDHS may terminate this Agreement pursuant to the Termination Article herein.

ARTICLE 6 CONSIDERATION AND METHOD OF PAYMENT

6.1 The total compensation to be paid to the Licensor by MDHS for all development, maintenance and ASP services, customizations, products, travel, performances and expenses under this Agreement shall not exceed the specified sum of \$**INSERT TOTAL COMPENSATION**, and shall be payable as set forth in the Payment Schedule attached hereto as

Exhibit A.

6.2 Licensors shall submit invoices with the appropriate documentation to MDHS monthly for any month in which ASP services and/or other Services are rendered. Licensors shall submit invoices and supporting documentation to MDHS electronically during the term of this Agreement using the processes and procedures identified by the State. MDHS agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies”, Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by MDHS within forty-five (45) days of receipt of the invoice. Licensors understand and agree that MDHS is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using the Statewide Automated Accounting System (“SAAS”) shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Licensors’ choice. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Licensors shall remain responsible and liable for full performance.

6.3 Acceptance by the Licensors of the last payment due from MDHS under this Agreement shall operate as a release of all claims for money against the State by the Licensors and any subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

ARTICLE 7 WARRANTY

7.1 Licensors represents and warrants that it has the right to license the Products provided under this Agreement.

7.2 Licensors represents and warrants that the Products provided by Licensors shall meet or exceed the minimum specifications set forth in RFP No. 3677 and Licensors’ Proposal, as accepted by the State, in response thereto.

7.3 During the term of this Agreement, the Licensors represents and warrants that all deliverables shall be free from any defect, deficiency, faultiness, imperfection, inadequacy, incompleteness or other condition (collectively referred to herein as “Defect”) which would render any such deliverable inoperable in any way or which would prevent full performance in accordance with this Agreement. This warranty includes, without limitation, correction of errors, design deficiencies, performance deficiencies, and incorrect or defective Documentation, including those found during acceptance testing, implementation, and the warranty period. Acceptance testing shall not in any way relieve the Licensors of its responsibilities to correct any Defect during the warranty period. The Licensors shall repair any Defect at no cost to the State within ten (10) business days of receiving notice of the Defect from the State, unless MDHS

consents in writing to a longer period of repair time. In the event Licensor is unable to repair or replace the Software within the mutually agreed upon time frame after receipt of notice of the Defect, MDHS shall be entitled to a full refund of fees paid and shall have the right to terminate this Agreement in whole or in part as provided for in the Termination Article herein. Licensee's rights hereunder are in addition to any other rights Licensee may have.

7.4 During the term of this Agreement, the Licensor represents and warrants that its Services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such Services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, Licensor shall perform the Services again, at no cost to the State, or if Licensor is unable to perform the Services as warranted, Licensor shall reimburse the State the fees paid to Licensor for the unsatisfactory Services.

7.5 Licensor represents and warrants that neither the Software, nor Enhancements shall contain a disabling code, lockup program or device. Licensor further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Licensee's licensed use of the Software, or Enhancements and/or which would restrict Licensee from accessing its data files or in any way interfere with the transaction of Licensee's business. For any breach of this warranty, Licensor at its expense shall, within ten (10) business days after receipt of notification of the breach, deliver Products to Licensee that are free of such disabling code, lockup program or device.

7.6 Licensor represents and warrants that neither the Software, nor Enhancements delivered to Licensee contain a computer virus. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Software or Enhancements that will damage or destroy Licensee's applications or data. For any breach of this warranty, Licensor at its expense shall, within five (5) business days after receipt of notification of the breach, deliver Products to Licensee that are free of any virus, and shall be responsible for repairing, at Licensor's expense, any and all damage done by the virus to Licensee's site.

7.7 The Licensor represents and warrants that, upon completion of the project, the Licensor, and all subcontractors, if any, shall convey to MDHS copies of all interim reports, cost records, data collection forms, and any working papers that support the final acceptance.

7.8 Licensor represents and warrants that it has obtained all necessary rights to permit use of the graphics on the site and that the Licensor shall provide MDHS with evidentiary proof of graphic licenses and releases. Further, the Licensor represents and warrants that all Licensor-supplied graphics and content contains no scandalous or libelous material.

7.9 The Licensor represents and warrants that the deliverables provided to MDHS under this Agreement, and their use by Active Users, will not infringe or constitute an infringement of any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Licensee agrees that it will promptly notify Licensor in writing of any such claim or action of which it has knowledge, and that it will cooperate fully in the defense and investigation of the claim by supplying Licensor all relevant information currently available and in its possession, all at Licensor's expense. Licensor shall, to the extent authorized by Mississippi law, have sole control over the defense or settlement of any such claim or action. Licensor, at its own expense, shall defend or settle any and all infringement actions filed against Licensor or the State which involve the deliverables or other items provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against the State. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Licensor shall, at its expense: (a) procure for the State the right to continue using such items, or (b) modify or replace them with non-infringing items with equivalent functionality, or, to the extent (a) or (b) cannot be done despite Licensor's commercially reasonable efforts, (c) refund to the State the fees previously paid by the State for the infringing Products. Said refund shall be paid within ten (10) business days of notice to the State to discontinue said use. In addition to the foregoing, the Licensor shall indemnify the State in accordance with the provisions of Article 18 herein.

7.10 Licensor represents and warrants that the host site provided by the Licensor shall be reasonably expandable and scalable so MDHS can add and support additional business functions and users over time. It is understood and agreed that any standard revisions, enhancements, improvements, and upgrades to the licensed Software and host site equipment during the term of this Agreement, including operating system, database management system, and other software, shall be provided by Licensor to MDHS at no additional cost to MDHS.

7.11 Licensor represents and warrants that it presently has and will continue to maintain, at its own expense, throughout the term of this Agreement, valid licenses for all software, trademarks, service marks, patents and copyrighted material and any other proprietary information of a third party that it will deploy in support of all products Licensor uses in the performance of this Agreement.

7.12 Licensor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal

Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Licensor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security where required, to provide a copy of each such verification to the State. Licensor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Licensor understands and agrees that any breach of these warranties may subject Licensor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Licensor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Licensor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

7.13 Licensor represents and warrants that the system provided pursuant to this Agreement will pass both internal security audits and independent security audits. For any breach of the preceding warranty at any time during which the system is covered by warranty and/or software support, Licensor shall, at its own expense and at no cost to Licensee, remediate any defect, anomaly or security vulnerability in the system by repairing and/or replacing any and all components of the system necessary in order for the system to be secure.

7.14 Licensor represents and warrants that no official or employee of Licensee or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Licensor warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Licensor also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

7.15 The Licensor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Licensor, terminate the right of the Licensor to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts,

jobs, or otherwise were offered or given by the Licensor to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Licensor as it would pursue in the event of a breach of contract by the Licensor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

ARTICLE 8 EMPLOYMENT STATUS

8.1 Licensor shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship.

8.2 Licensor represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Licensee.

8.3 Any person assigned by Licensor to perform the Services hereunder shall be the employee of Licensor, who shall have the sole right to hire and discharge its employee. Licensee may, however, direct Licensor to replace any of its employees under this Agreement.

8.4 Licensor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Licensor nor employees of Licensor are entitled to state retirement or leave benefits.

ARTICLE 9 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Licensor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Licensee location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff will be asked to leave the premises and may be suspended from further work on the premises. All Licensor employees and subcontractors who will be working at such locations shall be covered by Licensor's comprehensive general liability insurance policy.

ARTICLE 10 MODIFICATION OR RENEGOTIATION

This Agreement may be modified only by written agreement signed by the parties hereto, and

any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

ARTICLE 11 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

11.1 In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Licensor represents all contractors, third parties, and/or subcontractors Licensor has assembled for this project. The Licensee is required to negotiate only with Licensor, as Licensor's commitments are binding on all proposed contractors, third parties, and subcontractors.

11.2 Neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

11.3 Licensor must obtain the written approval of MDHS before subcontracting any portion of this Agreement. No such approval by MDHS of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of MDHS in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MDHS may deem necessary.

11.4 Licensor represents and warrants that any subcontract agreement Licensor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Licensee, and that the subcontractor acknowledges that no privity of contract exists between the Licensee and the subcontractor and that the Licensor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Licensor. The Licensor shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Licensor's failure to pay any and all amounts due by Licensor to any subcontractor, third party licensor, materialman, laborer or the like.

11.5 All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Licensor and the Licensee, where such dispute affects the subcontract.

ARTICLE 12 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of MDHS to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement. If the funds anticipated for the fulfillment of this Agreement are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to MDHS for the payments or performance due under this Agreement, MDHS shall have the right to immediately terminate this Agreement, in whole or in part, without damage, penalty, cost or expense to MDHS of any kind whatsoever, except for payment for work completed by Licensor and accepted by MDHS prior to termination. The effective date of termination shall be as specified in the notice of termination. MDHS shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement.

ARTICLE 13 TERMINATION

13.1 Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated, in whole or in part, as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement, the non-defaulting party may terminate the Agreement upon the giving of thirty (30) calendar days written notice unless the breach is cured within said thirty (30) day period; (c) MDHS may terminate the Agreement in whole or in part without the assessment of any penalties upon ten (10) calendar days written notice to Licensor if Licensor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) MDHS may terminate this Agreement in whole or in part for any reason without the assessment of any penalties after giving thirty (30) calendar days written notice specifying the effective date thereof to Licensor. The provisions of this Article 13 do not limit either party's right to pursue any other remedy available at law or in equity.

13.2 In the event MDHS terminates this Agreement, Licensor shall receive just and equitable compensation for Services rendered by Licensor and accepted by MDHS prior to the termination. Further, upon termination of this Agreement, Licensor shall refund any and all applicable unexpended prorated annual ASP fees previously paid by Licensee.

ARTICLE 14 GOVERNING LAW

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Licensor expressly agrees that under no circumstances shall the State be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Licensor. Further, nothing in this Agreement shall affect any statutory rights the parties may have that cannot be waived or limited by contract.

ARTICLE 15 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by either party, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of that party.

ARTICLE 16 SEVERABILITY

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

ARTICLE 17 CAPTIONS

The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or Article in this Agreement.

ARTICLE 18 HOLD HARMLESS

To the fullest extent allowed by law, Licensor shall indemnify, defend, save and hold harmless, protect and exonerate Licensee, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by Licensor and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

ARTICLE 19 THIRD PARTY ACTION NOTIFICATION

Licensor shall notify MDHS in writing within five (5) business days of Licensor filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Licensor or MDHS by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Licensor's performance under this Agreement. Failure of the Licensor to provide such written notice to MDHS shall be considered a material breach of this Agreement and MDHS may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

ARTICLE 20 AUTHORITY TO CONTRACT

Licensor warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

ARTICLE 21 NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Craig P. Orgeron, Ph.D., Executive Director, Mississippi Department of Information Technology Services, 3771 Eastwood Drive, Jackson, Mississippi 39211. Mississippi Department of Human Services's address for notice is: Mr. Tim Ragland, Chief Systems Information Officer, Mississippi Department of Human Services, 750 North State Street, Jackson, Mississippi 39202. The Licensor's address for notice is: **INSERT VENDOR NOTICE INFORMATION**. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

ARTICLE 22 RECORD RETENTION AND ACCESS TO RECORDS

Licensor shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Licensee, ITS, any state or federal agency authorized to audit Licensee, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Licensor's proposals, books, documents, papers and/or records that are pertinent to this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Licensor's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Licensor for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

ARTICLE 23 INSURANCE

Licensor represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Licensor's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Licensor will, upon request, furnish MDHS with a certificate of conformity providing the aforesaid coverage.

ARTICLE 24 DISPUTES

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Licensor and Licensee, shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

ARTICLE 25 COMPLIANCE WITH LAWS

Licensor shall comply with, and all activities under this Agreement shall be subject to, all Licensee policies and procedures which Licensor has received copies of, and all applicable federal, state, and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Licensor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 26 CONFLICT OF INTEREST

Licensor shall notify MDHS of any potential conflict of interest resulting from the provision of services to other customers. If such conflict cannot be resolved to MDHS's satisfaction, MDHS reserves the right to terminate this Agreement.

ARTICLE 27 SOVEREIGN IMMUNITY

By entering into this Agreement with Licensor, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

ARTICLE 28 CONFIDENTIAL INFORMATION

28.1 Licensor shall treat all Licensee data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of Licensee. In the event that Licensor receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a validly issued judicial order requiring divulgence of such information, Licensor shall promptly inform Licensee and thereafter respond in conformity with such court order to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the Licensor and its agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the Licensor following any termination or completion of this Agreement.

28.2 With the exception of any attached exhibits which are labeled as "confidential", the

parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Licensor. ITS will provide third party notice to Licensor of any requests received by ITS for any such confidential exhibits so as to allow Licensor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

ARTICLE 29 EFFECT OF SIGNATURE

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Licensor on the basis of draftsmanship or preparation hereof.

ARTICLE 30 OWNERSHIP OF DOCUMENTS AND WORK PRODUCTS

All Content collected by the Software shall be the property of Licensee. Licensor may use the Content only in the performance of this Agreement, unless otherwise agreed upon between the parties. Licensee acknowledges that the Products shall remain the exclusive property of Licensor and are excluded from this Article.

ARTICLE 31 NON-SOLICITATION OF EMPLOYEES

Licensor agrees not to employ or to solicit for employment, directly or indirectly, any of MDHS's employees until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by MDHS and the Licensor and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

ARTICLE 32 ENTIRE AGREEMENT

32.1 This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto, including all terms of any "shrink-wrap", "click-wrap" or "browse-wrap" license of the Software. RFP No. 3677, and Licensor's Proposal, as accepted by the State, in response thereto are hereby incorporated into and made a part of this Agreement.

32.2 The contract made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A. This Agreement signed by the parties hereto;
- B. Any exhibits attached to this Agreement;

- C. RFP No. 3677 and written addenda, and
- D. Licensor's Proposal, as accepted by the State, in response to RFP No. 3677.

32.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Licensor. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Agreement") and the lowest document is listed last ("D. Licensor's Proposal").

ARTICLE 33 STATE PROPERTY

Licensor shall be responsible for the proper custody of any Licensee-owned property furnished for Licensor's use in connection with Services performed pursuant to this Agreement. Licensor shall reimburse the Licensee for any loss or damage, normal wear and tear excepted.

ARTICLE 34 SURVIVAL

Articles 7, 14, 18, 22, 27, 28, 30, 31, and all other articles which, by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

ARTICLE 35 DEBARMENT AND SUSPENSION CERTIFICATION

Licensor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 36 SPECIAL TERMS AND CONDITIONS

It is understood and agreed by the parties to this Agreement that there are no special terms and conditions except as specifically provided in this Agreement.

ARTICLE 37 STATUTORY AUTHORITY

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of the Licensee's or Licensors contractual obligations, financial or otherwise, contained within this Agreement.

ARTICLE 38 COMPLIANCE WITH ENTERPRISE SECURITY POLICY

Licensors and Licensee understand and agree that all products and services provided by Licensors under this Agreement must be and remain in compliance with the State of Mississippi's Enterprise Security Policy. The parties understand and agree that the State's Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines at the time of contract execution. The State reserves the right to introduce a new policy during the term of this Agreement and require the Licensors to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

ARTICLE 39 SOFTWARE SUPPORT AND MAINTENANCE

39.1 As part of the Software support and maintenance services, Licensors will maintain the Products in an operable condition according to the specifications contained in the technical manuals and as outlined in RFP No. 3677 and the Licensors Proposal in response thereto. Licensors shall provide Licensee with Enhancements to the Software as they are made generally available from time to time. Notwithstanding any other provisions of this Agreement, Licensors shall provide support only with respect to the then-current generally available version of the Software.

39.2 Licensors shall also provide unlimited email and toll-free telephone technical support in the operation of the Software Products twenty-four (24) hours a day, seven (7) days a week. Licensors shall respond by telephone within one (1) hour to requests for support services. Licensee shall be given priority placement in the support queue for all system locking situations or problems claimed by Licensee to be a mission critical process. Upon receipt of Licensee's call, Licensors will (a) create an error report, (b) assign a severity level and (c) attempt to resolve the Software problem in accordance with the procedures and processes for problem resolution detailed below. It is understood by the parties that the Licensee and Licensors must mutually

agree on whether an error is classified as a Severity Level 1, 2, or 3 error.

39.3 Severity Level 1 implies that the Software is not functioning. Some examples of Severity Level 1 Software problems are as follows: (a) Software is down and will not restart; (b) Software is not able to communicate with external systems; and (c) Software is generating a data corruption condition. Licensor shall resolve Severity Level 1 Software Errors within one (1) business day, or within a mutually agreed upon time frame. When a Severity Level 1 Software Error is reported, Licensor will assign resources necessary to correct the Software Error. If access to the Software is required, Licensee will provide a contact available to Licensor and access to Licensee's system and other software for the duration of the error correction procedures.

39.4 Severity Level 2 implies that (a) an essential function does not work as documented, or (b) testing and usage can continue but the task cannot be completed, and no workarounds exist. Licensor shall assign at least one (1) dedicated person to the problem and shall resolve Severity Level 2 Software Errors within two (2) business days, or within a mutually agreed upon time frame.

39.5 Severity Level 3 implies a Software Error such that implementations of function do not match specification and/or technical Documentation, and a workaround may exist. Licensor shall resolve Severity Level 3 Software Errors within ten (10) business days, or within a mutually agreed upon time frame.

ARTICLE 40 FORCE MAJEURE

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Licensor shall notify the Licensee immediately in writing of the cause of its inability to perform; how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the State determines it to be in its best interest to terminate this Agreement.

ARTICLE 41 CHANGE ORDER RATE AND PROCEDURE

41.1 It is understood that the State may, at any time by a written order, make changes in the scope of the project. No changes in scope are to be conducted or performed by the Licensor except by the express written approval of the State. The Licensor shall be obligated to perform

all changes requested by the Licensee, which have no price or schedule effect.

41.2 The Licensor shall have no obligation to proceed with any change that has a price or schedule effect until the parties have mutually agreed in writing thereto. Neither the State nor the Licensor shall be obligated to execute such a change order; and if no such change order is executed, the Licensor shall not be obliged or authorized to perform services beyond the scope of this Agreement and the contract documents. All executed change orders shall be incorporated into previously defined deliverables.

41.3 With respect to any change orders issued in accordance with this Article, the Licensor shall be compensated for work performed under a change order according to the hourly change order rate of \$**INSERT CHANGE ORDER RATE** per hour. If there is a service that is not defined in the change order rate, the Licensor and the State will negotiate the rate. The Licensor agrees that this change order rate shall be a “fully loaded” rate, that is, it includes the cost of all materials, travel expenses, per diem, and all other expenses and incidentals incurred by the Licensor in the performance of the change order. The Licensor shall invoice the Licensee upon acceptance by the Licensee of all work documented in the change order, and the Licensee shall pay invoice amounts on the terms set forth in this Agreement.

41.4 Upon agreement of the parties to enter into a change order, the parties will execute such a change order setting forth in reasonable detail the work to be performed thereunder, the revisions necessary to the specifications or performance schedules of any affected project work plan, and the estimated number of professional services hours that will be necessary to implement the work contemplated therein. The price of the work to be performed under any change order will be determined based upon the change order rate; however, the change order will be issued for a total fixed dollar amount and may not be exceeded regardless of the number of hours actually expended by the Licensor to complete the work required by that change order. The project work plan will be revised as necessary.

41.5 The Licensor will include in the progress reports delivered under this Agreement, the status of work performed under all then current change orders.

41.6 In the event the Licensor and the State enter into a change order which increases or decreases the time required for the performance of any part of the work under this Agreement, the Licensor shall submit to the Licensee a revised version of the project work plan, clearly indicating all changes, at least five (5) working days prior to implementing any such changes.

41.7 The Licensee shall promptly review all revised project work plans submitted under this Agreement, and shall notify the Licensor of its approval or disapproval, in whole or in part, of the proposed revisions, stating with particularity all grounds for any disapproval, within ten (10)

working days of receiving the revisions from the Licensor. If the Licensee fails to respond in such time period or any extension thereof, the Licensee shall be deemed to have approved the revised project work plan.

ARTICLE 42 PERFORMANCE BOND

As a condition precedent to the formation of this Agreement, the Seller must provide a performance bond as herein described. To secure the Seller's performance, the Seller shall procure, submit to the State with this executed Agreement, and maintain in effect at all times during the course of this Agreement, a performance bond in the total amount of this Agreement. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the performance bond and shall identify a contact person to be notified in the event the State is required to take action against the bond. The term of the performance bond shall be concurrent with the term of this Agreement, with the exception of post-warranty maintenance and support, and shall not be released to Seller until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State's sole discretion, the State may, at any time during the warranty period, review Seller's performance and performance of the products/services delivered and determine that the Seller's performance bond may be reduced or released prior to expiration of the full warranty period. The performance bond shall be procured at Seller's expense and be payable to the Purchaser. The cost of the bond may be invoiced to the Purchaser after project initiation only if itemized in the Seller's cost proposal and in the attached Exhibit A. Prior to approval of the performance bond, the State reserves the right to review the bond and require Seller to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by Seller. The bond must specifically refer to this Agreement and shall bind the surety to all of the terms and conditions of this Agreement. If the Agreement is terminated due to Seller's failure to comply with the terms thereof, Purchaser may claim against the performance bond.

For the faithful performance of the terms of this Agreement, the parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**State of Mississippi, Department of
Information Technology Services, on
behalf of the Mississippi Department
of Human Services**

INSERT VENDOR NAME

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: Craig P. Orgeron, Ph.D.

Title: Executive Director

Date: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A
PAYMENT SCHEDULE